

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 9004 of 1998

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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ADITI RE- ROLLING MILLS LTD - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS MEGHA JANI for Petitioner

MR AJ DESAI, ASSTT. GOVERNMENT PLEADER for Respondents

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 08/10/2007

ORAL JUDGMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner, a Private Limited Company has challenged the

order dated 14.9.1998 issued by the Joint Industries Commissioner, whereby the petitioner's application for subsidy has been rejected on the ground that the petitioner has started production after 15.8.1995. The petitioner has also prayed that the respondents be directed to give the benefit of Capital Investment Subsidy to the petitioner either under the 1990-1995 Scheme or under the 1995-2000 Scheme.

2. The facts of the case stated briefly are that, the Government of Gujarat had floated the Sales Tax Incentive Scheme 1990-1995 and the Capital Investment Subsidy Scheme 1990-1995 with a view to encourage balanced growth of industries and generate employment in rural and less developed areas, pursuant to which the petitioner decided to set up its Re-Rolling Mill in Shihore Taluka. The operative period of the said Schemes was from 16th August, 1990 to 15th August, 1995. The petitioner purchased the required land and completed construction of factory premises and also installed the machinery by June 1995. Thus, by June 1995, all machineries were installed and infrastructure created and the factory was ready for being commissioned. The petitioner required 475 KVA electricity for running its re-rolling mill. It,

therefore, submitted its application to the Gujarat Electricity Board and completed all the necessary formalities. The Gujarat Electricity Board, after an inordinate delay, ultimately gave power connection to the petitioner on 4.9.1995 and the petitioner commenced production on 5.9.1995. Thus, there was a delay of 20 days in commencing production.

3. Considering the difficulties faced by units like the petitioner, the Government of Gujarat issued a resolution dated 9th November, 1995 extending the benefit of the 1990-1995 Scheme to units going into production on or before the specified date indicated in Clause 10 of the said resolution. However, the said Government Resolution covered only the Sales Tax Incentive Scheme, hence, the petitioner was given Sales Tax incentive under the said Scheme. However, the Government had not issued any such resolution in respect of the Capital Investment Subsidy Scheme. Therefore, the petitioner had made several representations to the respondents to appreciate the difficulties faced by the petitioner and requested them to extend the benefit of the Capital Investment Subsidy Scheme to the petitioner. However, the

respondent No.2 vide the impugned letter dated 14th September, 1998 had rejected the request of the petitioner and had taken a decision that the petitioner is not eligible to get the benefit of the subsidy. Being aggrieved, the petitioner has filed the present petition.

4. Heard, Mr. Megha Jani, learned Advocate for the petitioner and Mr. A. J. Desai, learned Assistant Government Pleader for the respondents.

5. Ms. Jani, learned Advocate for the petitioner has submitted that the petitioner had complied with all the requirements of the Scheme well within the operative period of the Scheme, and it was only due to default on the part of the Gujarat Electricity Board that the petitioner could not commence production within the said period. It was submitted that the respondents should have appreciated the difficulties faced by the petitioner and extended the operative period of the Capital Investment Subsidy Scheme as had been done in the case of the Sales Tax Incentive Scheme. It was submitted that the impugned decision of not giving subsidy to the petitioner is arbitrary and unreasonable and frustrates the very purpose of the Scheme

and as such, the petition deserves to be allowed by directing the respondents to extend the benefit of the subsidy scheme to the petitioner either under the 1990-95 scheme or the subsequent scheme of 1995-2000.

6. Mr. A. J. Desai, learned Assistant Government Pleader has drawn the attention of the Court to the affidavit-in-reply filed on behalf of the respondent No. 3, General Manager, District Industries Capital Investment Subsidy Scheme Centre, Bhavnagar wherein it has been stated that a pre-condition for getting benefit under the Capital Investment Subsidy Scheme was that the concerned unit should remain continuously in production for a minimum period of five years from the date of commencement of the commercial production. However, the petitioner unit after commencing production in the month of September 1995 was out of production on or about June 1998, within a period of two years and nine months. It was pointed out that subsequently, by a resolution dated 17.07.2000, the Government had modified the earlier Notification and had extended the time limit for commencement of production under the Scheme in question to 15.08.1996 instead of 15.08.1995. The said Scheme provided that pipeline units, namely units which had made investments prior to

15.8.1995 but had commenced production thereafter, but prior to 15.8.1996 shall be eligible to get subsidy, subject to the condition that the concerned unit shall start production on or before 15.8.1996 and remain continuously in production till 17.7.2000. However, the petitioner had failed to comply with the said pre-condition, hence, the petitioner was not considered as eligible for the benefit envisaged under the said Government Resolution. It was also pointed out that the petitioner unit has closed down for more than six years and remained out of production and was ultimately put up for auction for recovery of dues of the State Bank of Saurashtra. Mr.Desai, therefore, urged that there being no merit in the petition, the same deserves to be rejected.

7.As can be seen from the reliefs prayed for in the petition, the principal relief sought for by the petitioner is extension of the operative period of the Capital Investment Subsidy Scheme. From the facts noted hereinabove, it is apparent that by virtue of the Government Resolution dated 17.7.2000, the operative period of the said Scheme has been extended and units which have started production on or before 15.8.1996 are entitled to the benefits granted under the

said Scheme, subject to the condition, that they should be operative on the 17.7.2000. Paragraph 9 of the Capital Investment Subsidy Scheme 1990-1995 makes provision for "other conditions". Condition No.2 of paragraph 9 stipulates that the industrial unit will remain in production continuously for at least five years after it is commissioned. Hence, the pre-condition for eligibility under the Government Resolution dated 17.7.2000, is in consonance with the Scheme.

8.From the averments made in the affidavit, which have not been controverted by the petitioner by filing any affidavit-in-rejoinder, it is evident that the petitioner has stopped production or or about June 1998, hence, on the date of issuance of the Government Resolution dated 17.7.2000, the petitioner unit was not operative.

9.The petitioner admittedly has not remained in continuous production for a period of five years since the unit was commissioned as required under the Capital Investment Subsidy Scheme 1990-1995; nor was it operative on 17.7.2000 as required under the Government Resolution dated 17.7.2000. Hence, it is apparent that the petitioner is not eligible to the benefit of extension of the operative

period of the Scheme under the Government Resolution dated 17.7.2000.

10. In the aforesaid view of the matter, insofar as the first prayer is concerned, the grievance of the petitioner does not survive. Insofar as the second prayer is concerned, the petitioner is not entitled to the benefit granted under the Government Resolution dated 17.7.2000, hence, the relief whereby the petitioner seeks a direction against the respondents to give benefit of Capital Investment Subsidy to the petitioner, either under 1990-1995 Scheme or 1995-2000 Scheme, cannot be granted.

11. In the above view of the matter, the petition fails and is, accordingly, rejected. Rule is discharged.

[HARSHA DEVANI, J.]

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